



Iowa General Assembly

2008 Committee Briefings

Legislative Services Agency – Legal Services Division

<http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=232>

FOUNDATIONAL PROVISION SUBCOMMITTEE BRIEFINGS FOR ALL MEETINGS

Meeting Dates: [October 20, 2008](#) | [September 22, 2008](#) | [August 18, 2008](#) | [July 8, 2008](#)

Purpose. *This compilation of briefings on legislative interim committee meetings and other meetings and topics of interest to the Iowa General Assembly, written by the Legal Services Division staff of the nonpartisan Legislative Services Agency, describes committee activities or topics. The briefings were originally distributed in the Iowa Legislative Interim Calendar and Briefing. Official minutes, reports, and other detailed information concerning the committee or topic addressed by a briefing can be obtained from the committee's Internet page listed above, from the Iowa General Assembly's Internet page at <http://www.legis.state.ia.us/>, or from the agency connected with the meeting or topic described.*

FOUNDATIONAL PROVISION SUBCOMMITTEE OF THE CRIMINAL CODE REORGANIZATION STUDY COMMITTEE

October 20, 2008

Chairperson: Professor James Tomkovicz

Overview. The Foundational Provision Subcommittee of the Criminal Code Reorganization Study Committee is charged with reviewing foundational definitions, culpability issues, and inchoate (conspiracy) crimes. At this fourth meeting of the Subcommittee, Chairperson Tomkovicz, a criminal law professor at the University of Iowa College of Law, and Subcommittee members Representative Kurt Swaim and Mr. Thomas H. Miller, Deputy Attorney General of the Criminal Law Bureau, discussed and made recommendations on draft language relating to unresolved issues first raised at the July and August 2008 meetings of the Subcommittee concerning the definitions of voluntary act and accomplice liability. The Subcommittee also made tentative language proposals relating to definitions of the crimes of attempt, solicitation, and conspiracy to commit other offenses based upon discussions from the September 2008 Subcommittee meeting. The Subcommittee also discussed and made tentative proposals relating to intoxication and insanity defenses based upon a review and discussion of the relevant Model Penal Code, Iowa law, and other state statutory provisions. Mr. Matt Wilbur, Pottawattamie County Attorney, and Mr. Alan Ostregen, an assistant county attorney from the Muscatine County Attorney's Office, also attended the meeting and participated in the discussions.

Definition of Voluntary Act. The Subcommittee revisited the definition of a voluntary act in the context of criminal liability, focusing on the definition of "voluntary" and agreed to a recommendation defining a voluntary act as "a conscious or habitual body movement that is the product of the effort or determination of the person [or actor]."

Criminal Liability for the Acts of Others. The Subcommittee revisited the definition of accomplice liability and agreed to preserve the current principle that an accomplice will be liable not only for a crime the person knowingly aids in, but for any other crimes the person could reasonably expect to be committed by the principal actor.

Attempt, Solicitation, and Conspiracy. Chairperson Tomkovicz submitted draft language relating to the inchoate crimes of attempt, solicitation, and conspiracy based upon previous discussions. Subcommittee discussion focused on an examination of this specific language which involved rephrasing of the relevant Model Penal code provisions for the crime of attempt and restructuring Iowa's current provisions relating to solicitation and conspiracy. Chairperson Tomkovicz agreed to circulate a final draft of these proposals for final Subcommittee approval and recommendation after the meeting.

Intoxication. Chairperson Tomkovicz noted that both voluntary and involuntary intoxication may preclude criminal liability depending on the circumstances of the offense and it is thus necessary to define the circumstances under which intoxication is considered voluntary or involuntary. Iowa Code Section 701.5 relating to intoxicants or drugs is ambiguous and fails to address this concern. In addition, Iowa case law is also ambiguous as to whether and when involuntary intoxication is a defense to a crime. Subcommittee members agreed on an approach modeled after section 2.08 of the Model Penal Code including modifications addressing the three types of intoxication (voluntary/self-induced, involuntary/nonself-induced, and pathological intoxication), language precluding the use of voluntary intoxication to

negate knowledge, language stating that intoxication is not a mental disease or defect, and language that provides for an insanity-like defense for involuntary intoxication, consistent with the M'Naghten standard in Iowa. The M'Naghten standard for insanity provides that a person is insane if, due to a mental disease or defect, the person does not know the nature and quality of the person's act or does not know it is wrong.

Insanity. Subcommittee discussion focused on whether to retain the current insanity defense in Iowa (Code Section 701.4) or to modify it. Members agreed to modify certain language in section 701.4 including changing the reference to a "diseased or deranged condition of the mind" to "mental disease or a defect" and the term "incapable" to "lacks substantial capacity". Members also agreed that if the defense of insanity is raised, the burden of proving an insanity defense should remain on the plaintiff (preponderance of the evidence).

Subcommittee Action. Chairperson Tomkovicz agreed to prepare final draft language of the Subcommittee recommendations relating to attempt, solicitation, conspiracy, intoxication, and insanity and to circulate the proposals in writing to all members for final approval and recommendation to the Criminal Code Reorganization Study Committee.

Next Meeting. The next meeting of the Foundational Provision Subcommittee has tentatively been scheduled for Monday, November 17, 2008, at the University of Iowa College of Law in Room 450 (Faculty Lounge).

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FOUNDATIONAL PROVISION SUBCOMMITTEE OF THE CRIMINAL CODE REORGANIZATION STUDY COMMITTEE

September 22, 2008

Chairperson: Professor James Tomkovicz

Overview. The Foundational Provision Subcommittee of the Criminal Code Reorganization Study Committee is charged with reviewing definitions, culpability issues, and inchoate (conspiracy) crimes. At this third meeting of the Subcommittee, Chairperson Tomkovicz, a criminal law professor at the University of Iowa College of Law, and Subcommittee members Representative Kurt Swaim; Thomas H. Miller, Deputy Attorney General of the Criminal Law Bureau; and Jennifer Miller, Marshall County Attorney representing the Iowa County Attorneys Association, discussed criminal law issues relating to three general inchoate crimes: attempt, solicitation, and conspiracy to commit other offenses. The Subcommittee examined issues relating to how to define those offenses in terms of mens rea (culpability) and actus rea (conduct) and whether to include a renunciation defense in their recommendations. Senator Keith Kreiman and Mr. Jon Kinnamon, a criminal defense attorney, also attended the meeting. The Subcommittee made tentative proposals based upon a review and discussion of the relevant Model Penal Code and other state statutory provisions.

Attempt. Chairperson Tomkovicz noted that Iowa law has no general attempt provision. In Iowa, attempts are specifically prohibited for some crimes, but if the crime does not specifically include a prohibition of attempt, then an attempt to commit that crime is not an offense. Subcommittee discussion focused on section 5.01 of the Model Penal Code, which contains provisions relating to alternative definitions of the crime of attempt relating to the ways in which a person might fail to complete a crime but be properly held liable for attempting to commit the crime. Section 5.01 also contains a "substantial step" requirement, a provision relating to liability for an accomplice when the crime aided is not actually committed or attempted, and a renunciation defense for a person who has committed an attempt but who has voluntarily and completely renounced the person's criminal purpose.

Subcommittee members tentatively agreed to recommend proposal of a general attempt provision and the elimination of attempt from specific crimes, adoption of the "substantial step" provision contained in section 5.01 of the Model Penal Code, including the requirement that the conduct, to be considered a substantial step, must strongly corroborate the actor's criminal purpose, proposal of the same culpabilities for attempts as provided in the Model Penal Code (purpose for conduct, purpose or belief for results, same as completed crime for circumstances), and the elimination of an impossibility defense similar to Missouri's law. Members also tentatively agreed to include a renunciation defense modeled after section 5.01 of the Model Penal Code; however, members were split on whether to make this an affirmative defense. Members also declined to recommend a grading scheme for a general attempt provision, leaving this task instead for the sentencing subcommittee.

Solicitation. Subcommittee discussion focused on whether the current solicitation provision contained in Code Section 705.1 should be amended in light of the solicitation provision contained in section 5.02 of the Model Penal Code.

Subcommittee members tentatively agreed to recommend the following changes to Code Section 705.1: expand the provision to include soliciting a person to engage in "attempts" or conduct that would make the solicited person an accomplice; change "intent" to "purpose" for consistency with the proposed culpability provision and retain the requirement of corroboration of the intent by clear and convincing evidence; include the language "uncommunicated solicitation"; and expand the definition of solicitation as well as the renunciation provision relating to solicitation to include all crimes, not just aggravated misdemeanors and above. The Subcommittee was split on whether to make the renunciation defense an affirmative defense.

Conspiracy. Subcommittee discussion focused on whether the current conspiracy provision contained in Code Section 706.1 should be amended in light of the conspiracy provision contained in section 5.03 of the Model Penal Code. Subcommittee members tentatively agreed to recommend the following changes to Code Section 706.1: change "intent" to "purpose" for consistency with the proposed culpability provision; expand the definition of conspiracy to commit, attempt, or solicit to include all crimes, not just aggravated misdemeanors and above; expand the definition of conspiracy to provide that while not necessary to know the identity of other conspirators, one must know that a person with whom the person has conspired has conspired with others; include a renunciation defense similar to that provided in section 5.03 of the Model Penal Code, however, members were split on whether to make this an affirmative defense; and include a provision that a conspiracy to commit multiple crimes is generally one conspiracy only.

Subcommittee Action. Chairperson Tomkovicz agreed to prepare a final summary of the tentative Subcommittee recommendations relating to attempt, solicitation, and conspiracy and will circulate the proposals in writing to all members for final approval and recommendation. Chairperson Tomkovicz also noted that Senator Kreiman will replace Senator Robert Hogg on the Subcommittee.

Next Meeting. To be announced.

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FOUNDATIONAL PROVISION SUBCOMMITTEE OF THE CRIMINAL CODE REORGANIZATION STUDY COMMITTEE

August 18, 2008

Chairperson: Professor Jim Tomkovicz

Overview. The Foundational Provision Subcommittee of the Criminal Code Reorganization Study Committee is charged with reviewing definitions, culpability issues, and inchoate (conspiracy) crimes. At this second meeting of the Subcommittee, Chairperson Tomkovicz, a criminal law professor at the University of Iowa College of Law, and Subcommittee members Senator Rob Hogg; Representative Kurt Swaim; Mr. Thomas H. Miller, Deputy Attorney General of the Criminal Law Bureau; and Ms. Jennifer Miller, Marshall County Attorney representing the Iowa County Attorneys Association, discussed criminal law issues relating to causation, mistake of fact and law, and accomplice liability. The Subcommittee made tentative proposals based upon a discussion and review of the relevant Model Penal Code provisions and certain related state statutory provisions.

Causation. Subcommittee members discussed section 2.03 of the Model Penal Code, which addresses issues raised in cases where causation is an issue in a criminal offense. The issue of causation in the context of a crime occurs in situations where a defendant brings about a result by the defendant's actions or omissions; however, Chairperson Tomkovicz noted that many crimes do not require that a particular result occur and thus causation is not always an issue. Issues of interpretation and ambiguity also arise when considering how to statutorily define concurrent or intervening causes. The Subcommittee decided not to make a statutory recommendation to address the issue of causation, thus continuing to allow courts to develop the case law in this area.

Mistake of Fact and Law. Subcommittee discussion focused on section 2.04 of the Model Penal Code and Iowa Code Section 701.6, provisions relating to mistake or ignorance of fact or law. The basic issue in this area is whether a defendant's mistaken belief about a fact or a law should preclude that person's criminal liability. Members agreed Iowa Code Section 701.6 embodies certain provisions contained in section 2.04 of the Model Penal Code, but expressed concern about the ambiguity and inconsistency of the language in the state law stating persons are presumed to know the law but that evidence of an accused person's ignorance or mistake of either fact or law is admissible where it tends to prove the existence or nonexistence of an element of the crime. Members also discussed the specific provisions contained in section 2.04 of the Model Penal Code and tentatively agreed to recommend a provision based upon that section relating to affirmative mistake of law defenses. Subcommittee members also discussed other provisions of that same section relating to the specific circumstances under which ignorance or mistake of fact or law is a defense to a

crime.

Accomplice Liability. Subcommittee discussion focused on the need to define the basic elements of accomplice liability dealing with the issue of who should be held liable for criminal acts that are committed by another person. Although Iowa has statutes dealing with aiding and abetting, joint criminal conduct, and accessory after the fact, none of these statutes define the basic elements necessary for accomplice liability. Subcommittee members tentatively agreed to recommend accomplice liability provisions based upon section 2.06 of the Model Penal Code, including requirements relating to mens rea (guilty mind—knowingly promoting or facilitating the commission of the offense) and actus rea (guilty act—soliciting, aiding, agreeing to aid, attempting to aid, and failing to aid).

Subcommittee Action. Chairperson Tomkovicz agreed to prepare a summary of the tentative Subcommittee recommendations relating to causation, mistake of fact and law, and accomplice liability, and to submit the proposals in writing to all Subcommittee members for final approval and recommendation.

Next Meeting. The next meeting of the Foundational Provision Subcommittee is tentatively scheduled for Monday, September 22, 2008, from 10:00 a.m. to 2:00 p.m., at the University of Iowa College of Law in Iowa City.

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FOUNDATIONAL PROVISION SUBCOMMITTEE OF THE CRIMINAL CODE REORGANIZATION STUDY COMMITTEE

July 8, 2008

Chairperson: Professor Jim Tomkovicz

Overview. The Foundational Provision Subcommittee of the Criminal Code Reorganization Study Committee is charged with reviewing definitions, culpability issues, defenses, and inchoate crimes. At this first meeting, Chairperson Tomkovicz, a criminal law professor at the University of Iowa Law School, and Mr. Thomas H. Miller, Deputy Attorney General of the Criminal Law Bureau, discussed and made tentative proposals to the full Subcommittee concerning Actus Reus (Guilty Act) and Mens Rea (Guilty Mind), two of the most basic requirements of criminal culpability. The discussion focused on a review of the relevant Model Penal Code provisions and relevant state statutory provisions. The Subcommittee also received input from Mr. Marty Ryan, Legislative Director of the Iowa Chapter of the American Civil Liberties Union (ACLU), Ms. Mary Wolf, a criminal defense attorney, and Mr. John Neff, an interested citizen.

Actus Reus Provision. Subcommittee discussion focused on the definition of an act, voluntary and involuntary acts, the relationship of an insanity defense and involuntary acts and mental diseases or defects, criminal liability based upon failures to act (omissions), and possession (not including constructive possession).

Chairperson Tomkovicz and Mr. Miller agreed to propose the Subcommittee recommend adoption of an actus reus provision, that is, a provision that specifies that criminal liability requires a voluntary act or omission to perform an act, based upon section 2.01, subsection 1 of the Model Penal Code. After much discussion, they also agreed to further examine the issue of either delineating what is not considered to be a voluntary act, similar to the Model Penal Code approach (reflexes, convulsions, certain unconscious bodily movements, bodily movement during hypnosis or that otherwise is not a product of the effort or determination of the actor, either conscious or habitual) based upon section 2.01 of the Model Penal Code, or utilizing a general, affirmative definition of voluntariness, similar to the approach taken in Delaware. They also agreed to propose adoption of Model Penal Code language relating to omissions (no liability for omission unless the omission is expressly an element of the law defining the offense) and possession (possessor either knowingly procured or received the thing possessed or was aware the possessor had control of the thing possessed for a sufficient period of time).

Mens Rea Provision. Subcommittee discussion also focused on the second consideration for criminal liability, the mens rea, or guilty mind, requirement. Chairperson Tomkovicz noted the basic rule that there cannot be criminal liability without a guilty mental state with respect to each essential element of a criminal offense with the exception of specific provisions for strict liability crimes. Topics discussed included the general requirements and definitions of culpability under the Model Penal Code approach relating to mens rea, the issue of statutory silence regarding culpability, elements of proof, mistake of law, and strict liability.

Chairperson Tomkovicz and Mr. Miller agreed to propose the Subcommittee recommend adoption of many elements of the Model Penal Code approach to mens rea based upon the language contained in section 2.02 of the Model Penal Code, including definitions relating to purposely, knowingly, recklessly, and negligently as the minimum requirements for culpability, a provision relating to statutory interpretation where the statute defining a particular offense does not identify the culpable mental state for a material element of the offense, a provision that proof of a higher degree of culpability than a crime requires constitutes the requisite proof, and a provision relating to the "mistake of law" defense, whereby culpability is not required in regard to whether certain conduct is an offense except as otherwise expressly provided.

Subcommittee Action. As not all Subcommittee members were present for the meeting, no formal recommendations

were made. Chairperson Tomkovicz agreed to prepare a summary of the tentative proposals and to submit the proposals to other members of the Subcommittee for their review and further discussion.

Both Chairperson Tomkovicz and Mr. Miller recommended Ms. Jennifer Miller, Marshall County Attorney representing the Iowa County Attorneys Association, be added as a member of the Subcommittee.

Next Meeting. The next meeting of the Foundational Provision Subcommittee will be held on Monday, August 18, 2008, from 10 a.m. to 3 p.m. in Room 145A at the University of Iowa College of Law in Iowa City.

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